

REMARKS

Claims 1-27 are pending. Claims 5, 10, and 22 have been amended to correct typos brought to Applicant's attention by the Examiner. Claim 27 has been added. Favorable consideration and allowance of the claims are requested.

In the Claims

Please amend the claims as indicated in Annex I (marked-up copy of the claims). Applicant also encloses a clean set of the amended claims as Annex II.

Status of the Application

In the Office Action of November 4, 2002, the Examiner noted that claims 1-26 are pending in the application and rejected claims 1-26.

By this response new independent claim 27 is added. Applicant respectfully submits that no new matter has been introduced into the subject application. In this regard, new claim 27 is fully supported by the original specification and drawings at, for example, page 6, the third full paragraph. All paragraph references refer to the application as filed with the Patent and Trademark Office.

Claims 1-27 are pending. Further consideration and allowance of the instant application are respectfully requested.

Prior Art Rejection

Claims 1-26 have been rejected under 35 U.S.C. §102(e) as anticipated by Riffage.com and as described by References A through D. The Examiner characterizes the Riffage.com reference as disclosing a method for determining market demand for an artist that includes receiving user input to determine the artist with the strongest following to select from a pool of artists, determining the market demand for an artist by looking at the amount of money users contribute to the account of the artist by supporting said artist by downloads, cd and t-shirt purchases; and automatically identifying artists that hit a predefined level of contributions.

Applicant asserts that Riffage.com does not disclose a method or system that identifies the market demand for an artist based on the financial contributions the artist receives directly from users.

Riffage.com is a casualty of the dot com market implosion. Riffage.com went out of business several years ago and no longer has a presence on the World Wide Web. To describe the features of Riffage.com the Examiner relies on three separate articles. The Examiner alleges that the cited articles in combination disclose "determining the market demand for said selected artist based on users contributing to a fund for said artist." The three articles cited by the Examiner for the above limitation are:

"Curtain Closes for Riffage.com" by Lee (hereafter "Reference A");

“Riffage.com Picks up Indie Record Label” by Borland (hereafter “Reference B”);

“Bands and Fans Rub Elbows on Riffage.com” by McIntosh (hereafter “Reference C”).

In particular, the Examiner alleges that Reference A, page 1, section 1 and page 2, section 1; Reference B, page 1, section 4; and Reference C, page 1, section 3 and section 4 (all reference designations are Examiner’s own) disclose “determining the market demand for an artist by looking at the amount of money users contribute to the account of the artist by supporting said artist by downloads, cd and t-shirts purchases, etc.”

Reference A, page 1, section 1 reads

Riffage.com, which specializes in selling digital downloads and merchandize for unsigned artists, shut its door Friday. (Emphasis added.)

Reference A, page 2, section 1 reads

The most successful band would be considered for a record contract, and Riffage could then use its site to promote those artists.

Reference A, page 2, section 1 is part of a larger paragraph that reads

With the acquisitions of the concert hall and indie label, Riffage.com had set out to develop artists by integrating online and off line assets. The site served as a way to provide unsigned acts with exposure. More popular bands got a chance to open at the Great American [concert hall], which would webcast the shows. The most successful band would be considered for a record contract, and Riffage could then use its site to promote those artists.

Reference B, page 1, section 4 reads

In the future, bands that reach a high level of downloads or streaming requests on Riffage’s site will automatically reach the attention [of] 1500 Records’ talent scouts, with a chance of being signed to the label, the companies said.” (Emphasis added.)

Reference C, page 1, sections 3 and 4 read

Riffage.com features personalized fan pages, song charts based on customer ratings, and customized home pages for registered bands and solo artists. Musicians can interact with fans through live chats, discussion boards, and direct e-mail. Plus artists registered with Riffage.com receive daily sales reports, song rankings, and a marketing kit including Riffage.com business cards and stickers.

And the revenue breakdown between Riffage.com and its artists compares favorably to rival sites. While destinations such as MP3.com and goodnoise.com broker 50-50 revenue splits with registered musicians, Riffage.com exacts a scant

15-percent cut of all sales and waives all set-up fees. Riffage.com plans to make up the difference with advertising fees.

The independent claims of the present application include the limitation of **determining the market demand for said selected artist based on users contributing to a fund for said artist** or otherwise **identifying artists who receive a predefined level of financial contributions from users**. For example, claims 1 and 27 read, respectively:

1. A computer implemented method for determining the market demand for an artist comprising:

receiving user input to determine which artist to select from a pool of artists;

determining the market demand for said selected artist **based on users contributing to a fund** for said artist; and

identifying artists that attain a predefined level of user contributions.

27. A computer implemented method for determining the market demand for an artist comprising:

receiving input from a plurality of users to at least one of a plurality of artists;

selecting at least one artist from said plurality of artists **to receive financial contributions from said plurality of users**; and

identifying said at least one artist **that receives a predefined amount of financial contributions**.

The above limitation, that of **receiving contributions from users**, clearly distinguishes the present invention from the Riffage.com reference. Any monies transferred from a user to an artist in the Riffage.com reference are done to expressly purchase merchandise, such as downloads, t-shirts, and cds. There is no disclosure in the Riffage.com reference of a user giving money to an artist without receiving merchandise in exchange.

In the present invention, **users financially contribute to an artist and receive no merchandise in return for their contribution**. The money contributed by a user to an artist is a contribution and not a purchase. There is a clear distinction between a purchase and a contribution. A user contribution in the present invention is more akin to a contribution to a political party than a purchase of merchandise.

Riffage.com determines which artist is eligible to meet with a talent scout based on the number of downloads or the amount of artist merchandise purchased. In the present invention, once an artist obtains a predefined number of financial supporters, or their fund reaches a predefined amount, the fund, or a portion thereof, containing the contributions becomes available for use for the benefit of the artist. The artist can then use the fund on its behalf to produce and

commercialize itself. Support for the above proposition can be found, for example, on page 6 in the third full paragraph of the application as filed.

Moreover, user contributions are a stronger measure for the market demand for an artist because the users contribute support to the artist without receiving merchandise of equivalent value in return for their contributions. The Riffage.com reference measure of an artist's success is not as true a measure as the amount of user contributions. For instance, under the Riffage.com system users who buy merchandise associated with a particular artist because the artist has an irreverent saying on a t-shirt and not because users like the artist's music would meet with a talent scout.

Furthermore, in the Riffage.com reference before an artist is eligible to meet with a talent scout, the artist has to invest their own money on promotion and product merchandise. In the present invention, artists that reach a predefined level of contributions from users can then use the money in the fund to promote and buy their product merchandise to sell to users. The only thing an artist has to provide in the present invention is a sample of their work to be eligible to be able to compete for a fund to be associated with them in which users can contribute funds.

Because Riffage.com does not disclose receiving contributions from users and instead discloses merchandise sales, independent claims 1, 9, 10, 17, 22, 24, and 26 are not anticipated. Further, since dependent claims 7, 11-13, 15, 20, and 25 all depend from independent claims that include the limitation of **receiving contributions from users**, they too are not anticipated by Riffage.com.

The § 103 rejections

A. Riffage.com

Claims 4-6 have been rejected under 35 U.S.C. §103(a) as obvious in light of Riffage.com. Dependent claims 4-6 depend from claim 1. Claim 1 includes the limitation of receiving contributions from users. As discussed above, Riffage.com does not disclose receiving contributions from users. Instead, Riffage.com discloses users purchasing merchandise, such as downloads, cds and t-shirts, from artists. Because Riffage.com does not disclose receiving user contributions, claims 4-6 cannot be obvious in light of Riffage.com.

The Examiner alleges that claim 4 is obvious in light of Reference C, page 1, sections 3 and 4, and page 2, sections 1 and 4, because these sections disclose "giving each artist that attains funds on the site some of the money to produce and commercialize their band.". The sections from Reference C cited by the Examiner read

Riffage.com features personalized fan pages, song charts based on customer ratings, and customized home pages for registered bands and solo artists. Musicians can interact with fans through live chats, discussion boards, and direct e-mail. Plus, artists registered with Riffage.com receive daily sales reports, song rankings, and a marketing kit including Riffage.com business cards and stickers.

And the revenue breakdown between Riffage.com and its artists compares favorably to rival sites. While destinations such as MP3.com and goodnoise.com broker 50-50 revenue splits with registered musicians, Riffage.com exacts a scant

15-percent cut of all sales and waives all set-up fees. Riffage.com plans to make up the difference with advertising fees. (Emphasis added.)

Riffage.com encourages fans to engage bands via e-mail. By doing so, fans can interact directly with Riffage.com musicians, and bands can compile direct mailing lists to promote upcoming shows and album releases.

The above-cited sections clearly do not disclose distributing a fund made up of user contributions to an artist so that the artist can produce and commercialize itself. Riffage.com discloses only how sales revenue will be split between the artist and Riffage.com. Riffage.com requires that an artist have sales before any revenues are split. In the present invention, users contribute to a fund associated with an artist without buying or purchasing any merchandise from the artist. Thus in the present invention, the monies in a fund are distributed to an artist without the prerequisite of any sales ever occurring.

The Examiner alleges that claim 5 and 6 are obvious in light of Reference A, page 1, sections 1 and 2, and page 2, section 1; Reference B, section 4, and Reference C, page 1, section 4, and page 2, section 1, because these sections disclose “funding being provided to the artist, who is a musician, as well as the ability to attain a record label using the profits.”. The References read, respectively

Riffage.com, which specializes in selling digital downloads and merchandize for unsigned artists, shut its door Friday. (Emphasis added.)

With the acquisitions of the concert hall and indie label, Riffage.com had set out to develop artists by integrating online and off line assets. The site served as a way to provide unsigned acts with exposure. More popular bands got a chance to open at the Great American [concert hall], which would webcast the shows. The most successful band would be considered for a record contract, and Riffage could then use its site to promote those artists.

In the future, bands that reach a high level of downloads or streaming requests on Riffage’s site will automatically reach the attention [of] 1500 Records’ talent scouts, with a chance of being signed to the label, the companies said.” (Emphasis added.)

And the revenue breakdown between Riffage.com and its artists compares favorably to rival sites. While destinations such as MP3.com and goodnoise.com broker 50-50 revenue splits with registered musicians, Riffage.com exacts a scant 15-percent cut of all sales and waives all set-up fees. Riffage.com plans to make up the difference with advertising fees.

Again, the above-cited sections clearly do not disclose distributing a fund made up of user contributions to an artist so that the artist can produce and commercialize itself. Riffage.com discloses only how sales revenue will be split between the artist and Riffage.com. Riffage.com requires that an artist have sales before any revenues are split. In the present invention, users contribute to a fund associated with an artist without buying or purchasing any

merchandise from the artist. Thus in the present invention, the monies in a fund are distributed to an artist without the prerequisite of any sales ever occurring.

B. Riffage.com in view of “7up Launches a One-of-a-Kind Internet Music Program”

Dependent claims 2, 3, 8, 14, 16, 21, and 23 all depend from independent claims. All the independent claims currently pending include the limitation of **receiving contributions from users**. As discussed above, the Riffage.com reference does not disclose receiving contributions from users. Instead, the Riffage.com reference discloses users purchasing merchandise, such as downloads, cds and t-shirts, from artists. Because the Riffage.com reference does not disclose receiving user contributions, claims 2, 3, 8, 14, 16, 21, and 23 cannot be obvious in light of Riffage.com in view of “7up Launches a One of a Kind Internet Music Program” (hereafter “7up”).

The 7up reference discloses receiving user votes on a specially designated website to determine the “next hot alternative band.” The 7up references does not disclose users financially contributing to an artist. Therefore, the 7up reference does not provide or teach the missing limitation, that of receiving user contributions, to the Riffage.com reference. Thus, Riffage.com in view of 7up does not render obvious claims 2, 3, 8, 14, 16, 21, and 23.

C. Riffage.com in view of “TV Media Goes From Covering the News to Making It”

Dependent claims 18 and 19 depend from independent claim 17. Independent claim 17 includes the limitation of **receiving contributions from users**. As discussed above, Riffage.com does not disclose receiving contributions from users. Instead, Riffage.com discloses users purchasing merchandise, such as downloads, cds and t-shirts, from artists. Because Riffage.com does not disclose receiving user contributions claims 18 and 19 cannot be obvious in light of Riffage.com in view of “TV Media Goes From Covering the News to Making It” (hereafter “TV Media”).

The Examiner relies on the below paragraphs from the TV Media reference in alleging that dependent claims 18 and 19 are obvious in light of the Riffage.com reference in view of the TV Media reference.

The 28-year history of the Pennsylvania Ballet will be the subject of WPVI’s Malpass’ curtain speech. Malpass will retrace the ballet’s founding in 1963, by Barbara Weisberger with George Balanchine through its current resurgence under the artistic leadership of d’Amboise. Malpass will caution people not to wait until the ballet is gone to appreciate its value.

The need to support the arts will be represented appropriately by Whiting of WHYY. Calling the arts “a privilege, not a gift,” Whiting will inform the audience of what it truly costs to stage a ballet, including all of the hidden costs – costumes, props, theater rental, sound systems, artistic rights – before one even pay salaries of artists and staff.

Completing the program will be a look at the children of the ballet, in comments delivered by Kolpan of WXTF-TV. Kolpan will recount heartwarming stories of children who are sending their allowances and holding bake sales, just to keep The Pennsylvania Ballet around until they grow up. Kolpan will take a nostalgic turn, asking the audience to recall their first ballets, for many, performances of the "The Nutcracker" by The Pennsylvania Ballet.

Although The Pennsylvania Ballet officially suspended operations last Monday, March 10, the dancers, musicians, technicians, staff and supporters voted to donate their time, talent and energies to allow the curtain to rise on "Bravo Balanchine, Tudor!" (March 14-24).

If we're not successful, everyone who contributed donations will be entitled to a refund, he continued. "But I refuse to believe that the people and businesses of this city and region won't come out to support the ballet. It's become a part of their lives.

A hotline has been set up to process credit card donations from individuals and corporations interested in saving The Pennsylvania Ballet. Calls are being taken at 215-551-7014. Donations can also be mailed to: Save the Ballet, c/o The Pennsylvania Ballet, 1101 S. Broad St., Philadelphia, Pa., 19147.

In order to combine two references for an obviousness rejection there must be some reason, suggestion, or motivation from the prior art as a whole for the person of ordinary skill to have combined or modified the references. The TV Media reference teaches away from supporting a single artist and instead teaches raising money for an institution. Therefore, the TV Media reference cannot be combined with the Riffage.com reference for the proposition that users who fund an individual artist that fails to reach a predefined level of support receive a refund of their contribution that artist.

The TV Media reference discloses raising money for The Pennsylvania Ballet. The TV Media reference does not disclose determining the market demand for individual artists based on user contributions. The TV Media reference discloses nothing more than traditional fund raising for a cultural institution or public institution, such as a public library or public television. Thus, the Riffage.com reference in view of the TV Media reference do not render obvious claims 18 and 19.

CONCLUSION

For all the reasons advanced above, Applicant respectfully submits that the rejections have been overcome and should be withdrawn. Consequently, issuance of a Notice of Allowance is respectfully requested.

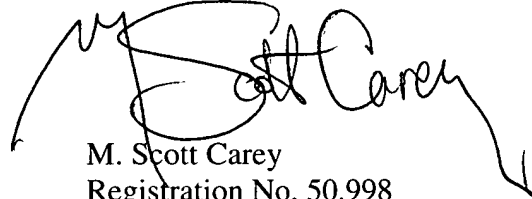
AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees that may be required for this Amendment, or credit any overpayment, to deposit account number 08-0219.

In the event that an extension of time is required the Commissioner is requested to grant a petition for that extension of which is required to make this response timely, and is hereby authorized to charge any fee for such, to deposit account number 08-0219.

Dated: April 4, 2003

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Scott Carey", with a large, stylized initial "M" and "S".

M. Scott Carey
Registration No. 50.998
Attorney for Applicants

Hale and Dorr LLP
300 Park Ave.
22 Floor
New York, NY 10022
(212) 937-7200 (Telephone)
(212) 937-7300 (Facsimile)

Annex I

5. (Amended Once) A method according to claim 4, further [wherein] comprising using said funds to produce a record from said funds when said artist is a musician.

10. (Amended Once) A method for an artist to obtain financial support comprising:
receiving and storing on a file server a sample of the artist's work;
evaluating the stored work from a pool of artists;
selecting an artist based on said artist's work to be eligible for financial contributions from users; and
establishing a fund of any such contributions for an artist who meets a predefined criteria.

22. (Amended Once) A computer implemented system for presenting artists to determine market demand for artists comprising a computer program[ed] having instructions for implementing the method of:

receiving and storing [the] work of artists on a file server;
dividing [the stored received works] said work into categories;
selecting said work[s] from said categories;
elevating selected works into positions that are eligible to receive direct financial support from users; and
promoting the artists who receive a predefined amount of direct financial contributions.

27. (New) A method for determining the market demand for an artist, said method comprising:

receiving input from a plurality of users to at least one of a plurality of artists;
selecting at least one artist from said plurality of artists to receive financial contributions from said plurality of users; and

identifying said at least one artist that receives a predefined amount of financial contributions, wherein said financial contributions are not in exchange for artist merchandise.

Annex II

(61) 5. A method according to claim 4, further comprising using said funds to produce a record from said funds when said artist is a musician.

10. A method for an artist to obtain financial support comprising:
receiving and storing on a file server a sample of the artist's work;
evaluating the stored work from a pool of artists;
selecting an artist based on said artist's work to be eligible for financial contributions from users; and
establishing a fund of any such contributions for an artist who meets a predefined criteria.

22. A computer implemented system for presenting artists to determine market demand for artists comprising a computer program having instructions for implementing the method of:

receiving and storing work of artists on a file server;
dividing said work into categories;
selecting said work from said categories;
elevating selected works into positions that are eligible to receive direct financial support from users; and
promoting the artists who receive a predefined amount of direct financial contributions.